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Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory

Letter dated 11 January 2005 from the Secretary-General to the President of the General Assembly

You will recall that in its resolution ES-10/15, adopted at the tenth emergency special session, the General Assembly acknowledged the advisory opinion of the International Court of Justice of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (A/ES-10/273 and Corr.1), including in and around East Jerusalem, and requested that I "establish a register of damage caused to all natural or legal persons concerned in connection with paragraphs 152 and 153 of the advisory opinion".

In its advisory opinion, the International Court of Justice had concluded that by the construction of the wall in the occupied Palestinian territory, Israel had violated various international law obligations incumbent upon it (para. 143) and that since the construction of the wall entailed the requisition and destruction of homes, businesses and agricultural holdings (para. 152), "Israel has the obligation to make reparation for the damage caused to all the natural and legal persons concerned". In paragraph 153 of its Opinion, the Court said:

> "Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction."

A register of damage is technically speaking a list or a record in documentary form. However, such a document cannot establish itself spontaneously. There is, therefore, a need for a mechanism that will be responsible for establishing and maintaining such a document. The legal and institutional framework set out below foresees a register and a mechanism for its establishment, a Registry.

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I. The purpose and legal nature of the Registry

1. The registration of damage is a technical, fact-finding process of listing or recording the fact and type of the damage caused as a result of the construction of the wall.* It thus entails a detailed submission process that would include a statement setting out the alleged damage, eligibility for registration and the causality between the construction of the wall and the damage sustained. It is important to understand that the Registry is not a compensation commission or a claims-resolution facility, nor is it a judicial or quasi-judicial body. The act of registration of damage, as such, does not entail an evaluation or an assessment of the loss or damage.

II. The structure and functions of the Registry

2. The Registry will consist of: (a) a Board, whose members are appointed by the Secretary-General in their personal capacity, and who shall be independent; (b) legal and technical experts in land and agriculture and in such other fields as may be necessary, appointed by the Board; and (c) a small secretariat consisting of administrative and technical support staff.

3. The Board will establish the rules and regulations governing the work of the Registry, and will have the overall responsibility for the establishment and maintenance of the register. It will establish eligibility criteria, categories of damage and the process of registration. On the recommendation of the experts, the Board will have the ultimate authority in determining the inclusion of damage in the register. The Board will report periodically to the Secretary-General.

4. Under the authority of the Board, the experts will consider submissions for inclusion in the register and deal with any other question entrusted to them by the Board. On the basis of the foregoing, they will recommend the inclusion of damage in the register.

5. The secretariat will service the members of the Board and the experts. It will be responsible for the administration of the Registry and the compilation of the database.

III. The legal status of the Registry

6. The Registry will be a subsidiary organ of the United Nations operating under the authority of the Secretary-General. The Convention on the Privileges and Immunities of the United Nations will thus apply to the Registry, its premises, equipment, database and personnel. The secretariat staff will have the status of officials of the United Nations within the meaning of articles V and VII of the Convention, and the members of the Board and technical experts will have the status of experts on mission within the meaning of article VI of the Convention.

IV. Resource requirements

7. The Registry will require adequate resources in keeping with its mandate and technical requirements. As a subsidiary organ of the United Nations it will be financed through assessed contributions. It is my intention to revert to the General Assembly in due course on the budgetary implications of the establishment of the Registry.

* The term used in the present letter, "the wall", is the one employed by the General Assembly.

V. The process of registration

8. In devising the process of registration, eligibility criteria and categories of damage, the Board will be guided by the relevant findings of the advisory opinion, general principles of law and, to the extent of their relevancy, principles of due process of law. The register will be publicly available.

1. Eligibility for registration

9. In accordance with the advisory opinion, both natural and legal persons who have sustained any form of material damage as a result of the construction of the wall are eligible for compensation. They are thus eligible to request the inclusion of damage in the register.

10. In accordance with the advisory opinion, the damage must be material damage, and a causal link will have to be established between the construction of the wall and the damage sustained.

2. Categories of damage

11. In paragraphs 133 and 153 of its advisory opinion, the International Court of Justice described the kinds of damage sustained as a result of the construction of the wall. They include: destruction and requisition of properties, seizure or confiscation of land, destruction of orchards, citrus groves, olive groves and wells and the seizure of other immovable property. Moreover, material damage sustained as a result of the construction of the wall is not limited to lands and crops, but also includes impeded access to means of subsistence, urban centres, work place, health services, educational establishments and primary source of water in areas between the green line and the wall itself. The categories of such material damage and their eligibility for registration will be elaborated in greater detail by the members of the Board.

3. Verification

12. A decision when and if it would be appropriate to engage in a process of verifying the fact and extent of the damage will be taken at a subsequent stage.

VI. The life-span of the Registry and the duration of the register

13. (a) The Registry will remain active for the duration of the process of registration. With the completion of the registration process, the Registry will be dissolved;

(b) The register of damage will remain open for registration for the duration of the wall on occupied Palestinian territory.

VII. Cooperation with the Government of Israel

14. The establishment and operation of the Registry in the occupied Palestinian territory will require the cooperation of the Israeli authorities in granting the Registry, its premises, database and other equipment, including its members, the privileges and immunities to which they are entitled under the Convention on the Privileges and Immunities of the United Nations. It will also require its cooperation in facilitating its operations, including granting the members and experts access to

documentary materials, to any governmental or municipal authority, organization or institution, or any other person whose information can assist the Board in the submission process.

I will keep the General Assembly appraised of developments relating to the establishment of the Registry.

(*Signed*) Kofi A. **Annan**